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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
Docket #04-C-0169

Pennichuck Corporation, Pennichuck Water Works, Inc., Pennichuck East Utility, Inc.
and Pittsfield Aqueduct Company, Inc.

v.

City of Nashua

PLAINTIFFS' OBJECTION TO DEFENDANT'S
MOTION TO DISMISS

Plaintiffs, Pennichuck Corporation ("Pennichuck"), Pennichuck Water Works, Inc., Pennichuck East Utility, Inc. and Pittsfield Aqueduct Company, Inc. (the "Pennichuck Utilities") (collectively the "Companies"), object to the City of Nashua's ("City" or "Nashua") Motion to Dismiss. In support of this Objection, Plaintiffs state as follows:

1. On April 20, 2004, the Companies filed this damages action based upon Nashua's violation of the Companies' state and federal constitutional rights. Pennichuck also brought state law claims alleging that Nashua intentionally interfered with Pennichuck's merger contract with Philadelphia Suburban Corporation, and that Nashua engaged in unfair business practices in violation of RSA Chapter 358-A when it intentionally made false and misleading statements about the Companies.

2. Despite the fact that Pennichuck brought this action in state court, Nashua removed the case to federal court and sought dismissal of the federal civil rights claims. (The federal court dismissed the two federal claims on the basis that they were not ripe for adjudication.). Nashua also requested that the federal court dismiss the remaining state law

claims, asserting that those claims should be heard by this court. The federal court declined to do so, and remanded the remaining counts to this Court. This case is once again before this Court after Nashua's procedural wrangling, and Nashua now seeks dismissal of all of Pennichuck's claims.

3 For the reasons stated in Pennichuck's Memorandum in Support of its Objection to City of Nashua's Motion to Dismiss, which is incorporated herein by reference, Nashua's Motion should be dismissed. In each and every count, Pennichuck has stated a claim for relief under New Hampshire law. Pennichuck has alleged facts sufficient to support a claim that Nashua violated its state constitutional rights to due process and its right to conduct business freely when Nashua invoked its eminent domain authority in bad faith and for improper purposes. Pennichuck has also stated a claim for intentional interference with contract based upon its allegations that Nashua successfully engaged in a deliberate campaign to kill Pennichuck's merger contract with Philadelphia Suburban. Finally, Pennichuck has also stated sufficient facts to support a claim for violation of RSA 358-A based on Nashua's efforts to disparage the Companies through false and misleading statements.

WHEREFORE, Pennichuck respectfully requests that this Court:

- A. Deny Nashua's Motion to Dismiss; and
- B. Grant any other or further relief that the Court deems necessary or appropriate.

Respectfully submitted,

PENNICHUCK CORPORATION, PENNICHUCK
WATER WORKS, INC., PENNICHUCK EAST UTILITY,
INC, AND PITTSFIELD AQUEDUCT COMPANY, INC.

By Their Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION


Date: October 22, 2004

By: 

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Certificate of Service

I hereby certify that on October 22, 2004, I served the foregoing by mailing copies thereof by first class mail, postage prepaid, to David Connell, Esq. and Robert Upton, II, Esq., counsel of record.


Thomas J. Donovan